

**THE SUPPLY OF GOODS: A NEW
STATUTORY SCHEME OF
GUARANTEES**

Impact assessment

JULY 2012

Contents

The Supply of Goods: A new statutory scheme of guarantees Impact Assessment (IA)	2
Summary: Intervention and Options	2
RPC Opinion:	2
Summary: Analysis & Evidence Policy Option 1	3
Evidence Base (for summary sheets)	4
Background Documents	4
Problem under consideration	4
Rationale for intervention	5
Policy objective	5
Description of options considered	5
Monetised and non-monetised costs and benefits of each option	6
Option 0: No change	6
Option 1: A new scheme of statutory guarantees	6
Costs	6
Benefits	6
Rationale and evidence that justify the level of analysis used in the IA	7
Risks and assumptions	7
Direct costs and benefits to business calculations	8
Wider impacts	8
Competition assessment	8
Impact on small firms	8
Summary and preferred option with description of implementation plan	9
Supply of Goods Impact Assessments: Overarching Explanation	10
Problem under consideration	10
Rationale for intervention	10
Policy objective	12
Policy Proposals	12
Clarity and understanding the law	12
Lack of definition	12
Lack of consistency	12
Overall Costs and Benefits	13
Rationale and evidence that justify the level of analysis used in the IAs	13
Risks and assumptions	14
Wider impacts	14
Competition assessment	14
Impact on small firms	14
Implementation Plan	15
The Consumer Law Reform Programme	16

Title: The Supply of Goods: A new statutory scheme of guarantees IA No: Lead department or agency: Department for Business, Innovation and Skills Other departments or agencies:	Impact Assessment (IA)		
	Date: 30/01/2012		
	Stage: Consultation		
	Source of intervention: Domestic		
	Type of measure: Primary legislation		
Contact for enquiries: Adam Gray, Consumer & Competition Policy, BIS, 3rd Floor, 1 Victoria Street, London. SW1H 0ET. T: 0207 215 1940; adam.gray@bis.gsi.gov.uk			
Summary: Intervention and Options		RPC Opinion: AMBER	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£m	£m	£m	Yes/No In/Out/zero net cost

What is the problem under consideration? Why is government intervention necessary?

The problem is that a complex legal framework for consumer law is contributing to a low awareness of consumer rights amongst business and consumers, which means that both parties waste time and money on unnecessary disputes. Consumer rights regarding the quality and fitness of goods are provided by statute, but are confusingly described as 'implied terms' rather than consumer rights because they are 'implied' into the contract between consumer and trader. Also, because of the piecemeal development of the law, the terms are spread across a number of different Acts, each covering different types of supply transactions. It is preferable that there should be one Act which clearly sets out in plain language the quality standards for goods and the remedies available to the consumer if the standards are breached, so that the law becomes easier to understand and apply, saving time and money for consumers and businesses alike.

What are the policy objectives and the intended effects?

The policy objective is to increase consumer confidence and reduce business costs by modernising and simplifying the structure of UK consumer law, making it more accessible, and consumers more informed about their rights.

Simplifying the complex legal terminology and structure of the law should also reduce business reliance on legal advice, may reduce training costs for staff, and should result in fewer costly disputes.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

We have considered the following options:

Option 0: No change to the current legislation - no summary sheet has been completed for this option as there are no net costs or benefits to maintaining the status quo.

Option 1: Move away from the current system of implied terms and adopt a system of statutory guarantees which clearly state the standards that goods must meet and the remedies available to the consumer if the guarantees are breached. This is the preferred option because it will achieve the policy objectives without imposing any additional costs, given that the substance of the law, in terms of the applicable standards and remedies, will remain unchanged.

Will the policy be reviewed? It will/will not be reviewed. **If applicable, set review date:** Month/Year

Does implementation go beyond minimum EU requirements?			N/A			
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.		Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)				Traded:		Non-traded:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister



Date: 12/07/2012

Summary: Analysis & Evidence

Policy Option 1

Description: A new scheme of 'statutory guarantees' for the supply of goods

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate:

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised costs by 'main affected groups'

There is no direct associated cost because this is a technical change to the legal structure for the purposes of clarity, not a substantive change to the law.

Other key non-monetised costs by 'main affected groups'

This change should contribute towards improved consumer awareness and confidence. In the short term it may impose some costs on businesses by encouraging more consumers to understand and therefore perhaps exercise their rights. However, this is not deemed to be a direct cost because it would only stem from higher compliance with the existing law.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate			

Description and scale of key monetised benefits by 'main affected groups'

There are no quantified benefits associated with this change.

Other key non-monetised benefits by 'main affected groups'

Making consumer rights more accessible and straightforward to understand for both businesses and consumers should help increase cost effectiveness in dealing with consumer detriment by speeding dispute resolution, reducing staff training costs and making litigation less likely. A more effective consumer regime would help provide a level playing field for law abiding businesses, which should contribute towards increasing competition and innovation, which are some of the key drivers of economic growth.

Key assumptions/sensitivities/risks

Given the technical of this change, no associated risks have been identified.

Discount

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs:	Benefits:	Net:	Yes/No	IN/OUT/Zero net cost

Evidence Base (for summary sheets)

Background Documents

1. This document forms part of a suite of IAs relating to the supply of goods. An overarching summary of all of these related IAs at a high level is provided at **ANNEX A**.
2. More widely, the proposals set out in this Impact Assessment form a part of a proposed wider reform of consumer law, intended to simplify and clarify consumer law to reduce business compliance costs and empower consumers. The proposals in this Impact Assessment would require primary legislation to be implemented, which we propose to do via a Consumer Bill of Rights.
3. Following changes to the law it would be our intention that a communications campaign will be initiated in order to inform consumers and those who deal with consumers and also businesses of the changes to the law. The Consumer Landscape Review is being implemented and one of its objectives is to streamline the provision of advice on consumer issues through Citizens Advice. Therefore we are already talking to Citizens Advice about their role in communicating the changes that the consumer law reform programme will bring about. We will discuss awareness raising for businesses with a range of business representative bodies
4. There is further information about the Consumer Law Reform programme in **ANNEX B**.

Problem under consideration

5. The problem is that a complex legal framework for consumer law is contributing to a low awareness of consumer rights amongst business and consumers, which means that both parties waste time and money on these issues unnecessarily. The very concept of 'implied terms' is a technical legal one, which would mean little to a consumer or shop staff member. Consumer cases are very rarely taken to court, and so it is essential that consumer rights can be easily understood and applied without legal expertise if they are to be effective on the ground. As a result, the complex legal structure of implied terms is operating as an unnecessary hindrance to the effective operation of the consumer rights regime by making consumer rights more difficult to understand and enforce than they need to be.
6. Consumer rights regarding the quality and fitness of goods are provided by statute, but the relevant standards are implied as terms into the contract between consumer and trader. There are various types of supply transactions, ranging from the sale of goods to contracts of hire. In respect of all of these transactions, the law implies similar terms into the underlying contract.
7. The first type of implied term is that the goods must correspond with their description, which relates to the essential characteristics of the goods. The second is the general standard that goods must be of satisfactory quality. This is a flexible test which is applied objectively and takes into account a range of factors specific to a particular contract, with common factors listed in the legislation to be considered as appropriate. The third is that goods must be reasonably fit for any particular purpose which the consumer has made known to the seller, provided that it was not unreasonable for the consumer to rely on the seller in selecting the goods for that purpose.
8. However, because of the piecemeal development of the law, these implied terms are not found within one Act of Parliament for all types of transaction, but spread across a number of different pieces of legislation, each covering some types of supply transactions. A further complication is that the original rationale for the implied terms model was that by establishing whether each term was a "condition" or a "warranty" it was clear to legal professionals what remedies were available for breach. However, development of the law over many years has meant that in some cases these traditional remedies have been superseded by those now contained within the statute – for example the right to a repair or replacement of faulty goods etc. that came into effect in 2003. In these cases the implied terms serve only to establish the quality standards, and this could be more easily and clearly achieved as part of a scheme of statutory guarantees.
9. The biggest concern with the current state is that whilst there is one single standard required of goods supplied to consumers, it has had to be included in separate measures to ensure that it is widely applicable. This has resulted in unnecessary fragmentation of the law. It seems preferable that there

should be one Act which clearly states the standards legally required of any goods supplied to a consumer.

10. Replacement of the implied terms with a new statutory standard is unlikely to be controversial. It would simplify the law and make it more accessible.
11. There is ample evidence to suggest that the complexity of the current legal framework results in a degree of confusion among businesses. An OFT report, for example, found that 'in the absence of detailed knowledge, many businesses ...said that they followed their understanding of the principles of consumer protection laws rather than 'the letter of the law.'¹ This has a direct impact on the cost of staff training, with the Davidson review stating that 'in the retail sector the main challenge is to train staff to know what remedies a consumer is entitled to'². It also imposes costs in terms of time spent dealing with complaints, both legitimate ones and groundless ones that, if knowledge of the law was greater, could easily be dismissed.
12. Similarly, there is ample evidence that many consumers have a poor knowledge of the law, either being unaware of the legal rights that they possess, or believing that their statutory rights are stronger than the reality. For example, an FDS report found that 'participants aged under 25 ... appeared likely to underestimate their consumer rights' whilst 'older people, often influenced by the policies of their preferred retailers, tended to overestimate them'³

Rationale for intervention

13. The rationale for intervention is that implied terms are causing the problems described above, without bringing any obvious benefit that could not be achieved through a clearer system. Indeed, an independent and in-depth academic report concluded that a move away from implied terms towards a clearer system of statutory guarantees would be 'easily achieved, highly desirable and unproblematic'.⁴ There therefore seems to be a strong case for reforming this unnecessarily detrimental system.

Policy objective

14. The policy objective is to increase consumer and business confidence by modernising and simplifying the structure of UK consumer law, making it more accessible, and consumers more informed about their rights.
15. Simplifying the complex legal terminology and structure of the law should also reduce business reliance on legal advice and may reduce training costs for staff.

Description of options considered

16. We have considered the following options:
17. **Option 0:** *No change to the current legislation* - no summary sheet has been completed for this option as there are no net costs or benefits to maintaining the status quo.
18. **Option 1:** *Move away from the current system of implied terms and adopt a system of statutory guarantees which clearly state the quality standards that goods must meet and the remedies available to the consumer if these guarantees are breached.*
19. This option would involve explicitly setting out in the Bill the standards legally required of any goods supplied to a consumer. It would not involve creating significantly different rights and obligations but would just set them out in a clearer, more coherent and comprehensive way. The contractual language

¹ OFT, 'Consumer Law and Business Practice, Drivers of compliance and non-compliance' (2010), p.6

² Davidson Review, Implementation of EU Legislation (2006), p.40

³ FDS, 'Qualitative Research into Consumers' Perceptions of Consumer Remedies for Faulty Goods', in The Law Commissions, 'Consumer Remedies for Faulty Goods, A Joint Consultation Paper', Appendix A, p.137

⁴ Prof. Twigg-Flesner (ed.), 'Consolidation and Simplification of UK Consumer Law' (2010), p.35

of “condition” and “warranty” and the contractual remedies which flow from a breach would be replaced by clearly expressed remedies (to similar effect) that would be available to consumers if the guarantees were breached. Reducing complexity and increasing transparency would make it easier for consumers and businesses to understand their rights and obligations.

20. Moving to a scheme of statutory guarantees with associated remedies for breach of these guarantees would also help to reduce the present differences in terminology and legal approach under English and Scottish law.

Monetised and non-monetised costs and benefits of each option

Option 0: No change

21. There are no benefits or costs associated with this option as the status quo is maintained.

Option 1: A new scheme of statutory guarantees

Costs

22. There are no direct associated costs in relation to the proposed changes because this is a technical change to the legal structure for the purposes of clarity, not a substantive change to the law.
23. If the measure is successful in contributing towards improved consumer awareness and confidence, it may indirectly lead to an increase in short-term costs for some businesses related to dealing with consumers pursuing their rights. This would arise where consumer rights are currently so opaque that they are not exercised. Greater clarity might persuade more consumers to step forward to assert their rights. But the extent of any such change is highly uncertain because many businesses offer clear consumer rights anyway, often going beyond the statutory minimum. The impact would also only be felt by those businesses denying current consumer rights and the extent of this undetected breach is not known. It is also unclear to what extent and over what timeframe simpler law will actually deliver increased consumer assertiveness. However widespread this phenomenon turns out to be, it is not deemed to be a direct cost imposed by this change because it would only stem from higher compliance with the existing law.
24. In any case, there is also evidence that some consumers believe that their rights are stronger than they are in reality and may pursue claims that have no legal basis (often confusing stores’ “no quibble” returns policies with their statutory rights). The BRC report that retailers often pay out on such claims, despite their lack of legal basis, because the retailer is either confused over the law or wishes to avoid an argument with the customer on the shop floor. Clarifying consumer rights may reduce the number of such baseless claims, and provide confidence to business to refuse them.
25. The fact that business groups enthusiastically support this change may indicate that they believe this positive impact to outweigh any negative impact of greater consumer assertiveness.
26. There is also a small risk that, in addition to increased consumer assertiveness, some businesses who currently do not comply with the implied terms and associated remedies, because they are difficult to understand, will have to change their business practices at some cost once they do understand the law properly. For the purposes of this impact assessment, we have assumed 100% compliance, to enable a focus on the costs and benefits of the changes proposed specifically for compliant businesses. However, we are aware that this will not be the case in reality, and so the business cost on the ground may be slightly higher, though this should be seen as a positive step towards better legal compliance.

Benefits

27. The change proposed above should make consumer rights more accessible and straightforward to understand for both business and consumer alike. This should help to speed up the time taken to resolve disputes and lead to a business saving in relation to ensuring compliance with the law. In particular, it may lead to

- a reduced need for businesses and consumers alike to take legal advice;
 - reduced number of cases being litigated;
 - reduced training for new staff;
28. The specific move away from implied terms will only bring a small proportion of each of these intended benefits, which most of our proposed reforms are designed to contribute to. Unfortunately we currently lack the detailed data necessary to establish the exact contribution of this specific reform, but we will be seeking more data through consultation, and remain convinced that this represents a worthwhile step towards these objectives.
29. It has been estimated⁵ that the total volume of consumer complaints, including those not reported to consumer and regulatory bodies, is around 120 million a year: and that the cost to the UK economy of handling those complaints, including costs to businesses and to enforcement bodies and the judicial system is as high as £24 billion p.a. across the whole range of sectors, with the average cost to business per complaint handled standing at £200. These costs arise at various stages of the complaints handling process, increasing proportionately according to the complexity of the particular case, with the top 10% of cases (those going to mediation/arbitration and/or court) thought to account for nearly 80% of the costs. These are only very rough estimates, but they do indicate that if consumer law was clarified and the number of cases getting taken to mediation, arbitration or court then fell, the savings could be significant.
30. The Association of Convenience Stores and the Federation of Small Businesses both argue that awareness of the current law is especially low among small businesses and we therefore believe that these changes will be especially beneficial to this group. This is reinforced by the OFT report which also found that ‘SMEs in particular are likely to have less awareness of the detail of consumer protection laws, and how they can access relevant information to assist compliance.’⁶
31. A more effective consumer regime in general should also help to boost consumer confidence and competition. By making consumers more aware of their rights this reform should give them the confidence to shop at a wider range of available retailers, thereby promoting competition, helping new market entrants, and ultimately driving economic growth. Similarly, consumers’ increased confidence to insist on their rights will help to level the playing field between businesses, as unscrupulous traders will be less able to undercut competition by ignoring consumer rights.

Rationale and evidence that justify the level of analysis used in the IA

32. Quantification of the benefits resulting from a change in the structure of the law aimed at increasing consumer awareness and subsequently leading to a more cost effective consumer regime in the medium term, which might filter in the longer term into a more vigorous competitive environment in the UK economy would be disproportionately time and resource consuming given the nature of the proposed change.
33. The Government has therefore focused on describing the costs and benefits for the main affected groups at this stage, whilst inviting respondents to the Consultation to comment on the benefits they see arising out of these changes, in order to better inform the final Impact Assessment.

Risks and assumptions

34. We have identified no risk in relation to the proposed changes.

⁵ Peter Eisenegger, Andrew Hart, Arnold Pindar, "A fuller picture" - A lean process view of consumer law and its enforcement' (July, 2008), a response to 'BERR's Consumer Law Review: Call For Evidence' (May, 2008)

⁶ OFT, 'Consumer Law and Business Practice, Drivers of compliance and non-compliance' (2010), p.6

Direct costs and benefits to business calculations

35. In an ideal world with infinite resources, in order to quantify and monetise all the relevant costs and benefits, the value of simplification would have to be estimated by calculating the current cost of, and expected savings in:
- the average time spent by both parties on disputes (covering employee wages used up, or consumer wages lost)
 - any legal advice sought by either party
 - court time, if any, taken up in deciding disputes
 - staff-training costs for businesses
36. However, attributing any exact portion of these costs specifically to the complexity of the implied terms system would be very difficult even with infinite resources.
37. A complete cost/benefit analysis would also have to estimate the number of consumers, if any, who are put off dealing with problems specifically because of the complexity of the implied terms system. The value of such potential returns could be a cost to business, but would be extremely difficult, if not impossible, to calculate.
38. Therefore, we cannot provide robust figures for an OIOO calculation at this stage, but expect this change to cause a decrease in the burden on business, due to the benefits of simplicity and clarity.

Wider impacts

Competition assessment

39. We believe that a basic floor of consumer rights makes consumers more prepared to buy unfamiliar or unadvertised products from unknown retailers. A base level of remedies provides a risk/reward ratio that allows new providers to enter the market at a competitive price.
40. On the other hand, if the law were to impose excessive consumer rights, this would increase prices. It would prevent consumers from exercising choices about the balance between price and quality which most met their needs. Consumers might be forced to buy a better quality of good than they wished at an excessive price.
41. It would appear that competition is best served by a balanced approach. However, all of these benefits can only be realised if the relevant consumer rights can be accessed and understood by consumers and businesses alike. We believe that the proposed change represents an important step in this direction.

Impact on small firms

42. Small firms are an important part of the retail sector. In 2011 there were around 478,000 businesses with fewer than 50 employees in the 'Wholesale and Retail Trade' (including repair of Motor Vehicles and Motorcycles), and they accounted for 36.5% of total turnover in this sector.⁷
43. Ethnic minority businesses are concentrated within this sector⁸. Small shops are particularly likely to be Asian-owned. Some studies suggest that as many as three-quarters of all independently-owned single retail outlets in London are Asian⁹.
44. Small firms are especially sensitive to some of the problems outlined above. First, they may find it difficult to cope with the present complexity of the law, lacking the in-house legal resources of large

⁷ BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

⁸ Of ethnic minority-led businesses with employees in the UK, 87% are in the service sector, compared with only 72% of non ethnic minority-led businesses. See www.berr.gov.uk/files/file38247.pdf.

⁹ For further discussion, see "The contribution of Asian-owned businesses to London's economy" GLA Economics (June 2005) p 13, at http://www.london.gov.uk/mayor/economic_unit/docs/asian_businesses.pdf. Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

retailers. Studies show, for example, that they are often over-represented as defendants in small claims proceedings, and find the litigation process particularly stressful¹⁰.

45. Secondly, small firms are most affected by low consumer confidence. Without clear and accessible legal rights and remedies, consumers tend to buy from large firms with well-known reputations. We therefore expect the proposed change, and consequent improvements to the clarity and accessibility of the law, to particularly benefit SMEs.

Summary and preferred option with description of implementation plan

46. Move away from the current system of implied terms and adopt a system of statutory guarantees which clearly states the quality standards that goods must meet and the remedies available to the consumer if these guarantees are breached.
47. The government's intention is to implement this proposal through the planned Consumer Bill of Rights with a tentative implementation date of 2014 (subject to the findings of consultations and the Parliamentary timetable). A post-implementation review will be carried out within 3-5 years of Royal Assent, as per the requirements for post legislative scrutiny.

¹⁰ J Baldwin, *Small Claims in the County Courts in England and Wales* (1997) pp 26 and 100.

Supply of Goods Impact Assessments: Overarching Explanation

Problem under consideration

1. At present many businesses and consumers are unaware, or unclear, about their rights and obligations, leading to disputes that are costly for business and consumers, and preventing consumers from effectively pursuing their rights.
2. Responses to the Consumer Law Review which took place in 2008 suggested there would be strong benefits for business, consumers and enforcers from a coherent consolidated law, clearly expressed, which as far as possible minimised the differences between different types of contract and manners of purchase, including digital downloads.¹¹
3. Our proposals are based on research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law'¹² as well as the above-mentioned Consumer Law Review and the Law Commission and Scottish Law Commission's 2009 report on 'Consumer Remedies for Faulty Goods'¹³.

Rationale for intervention

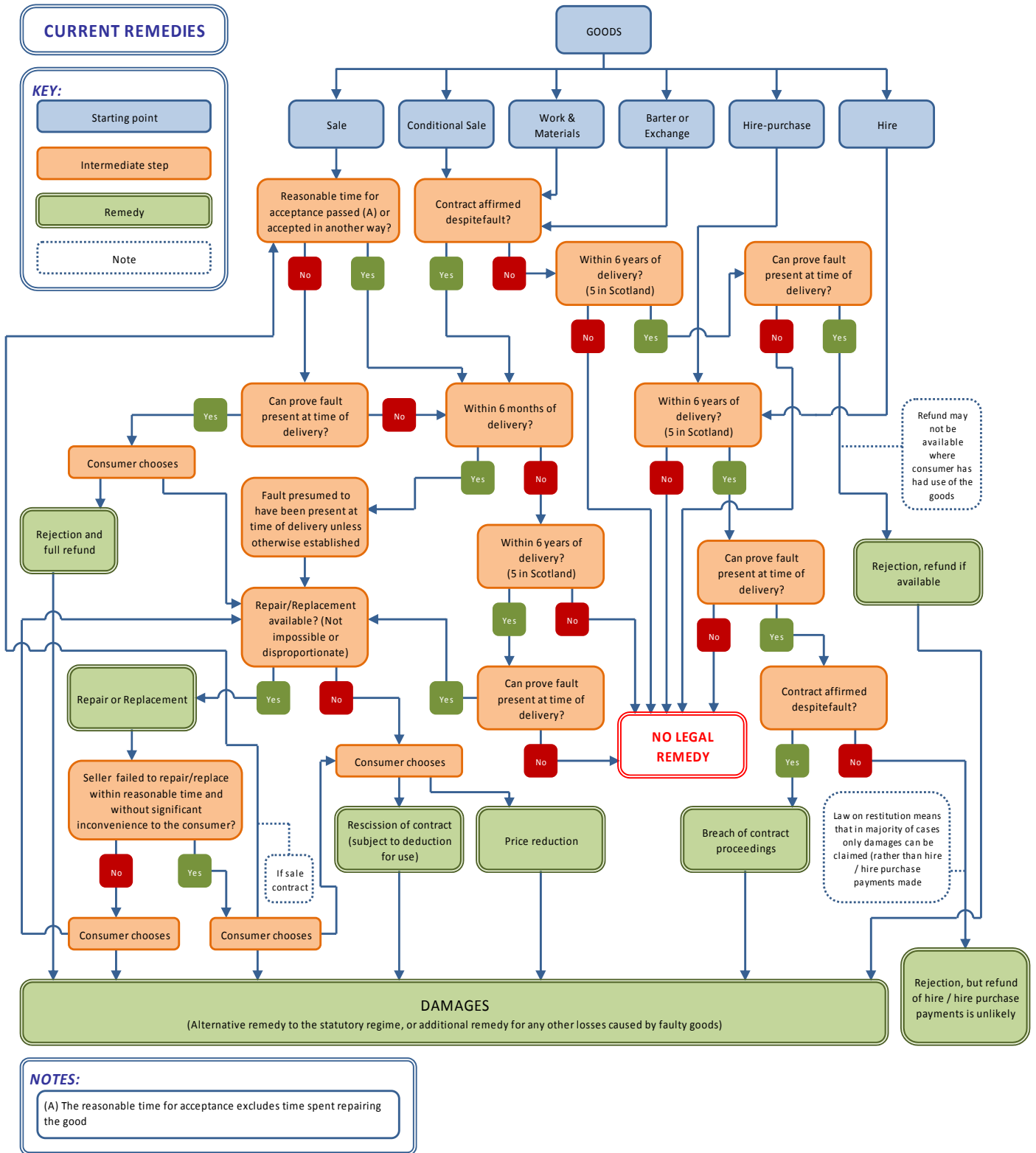
4. Responses to the Consumer Law Review (2008), the Law Commission and Scottish Law Commission's report on Consumer Remedies for Faulty Goods (2009) and research conducted for the Department on 'Consolidation and Simplification of UK Consumer Law' (2010) all suggested there would be strong benefits for business, consumers and enforcers from a coherent consolidated law, clearly expressed, which as far as possible minimised the differences between different types of contract and manners of purchase. Such changes would make the law more accessible, increasing both business and consumer awareness of their rights and obligations.
5. Consumer sales in the UK were worth £5,774 million per week in the first quarter of 2011 (the latest data available) and there is evidence that the scale of consumer detriment in the UK is large. The latest available research conducted by the OFT estimated that the total consumer detriment related to problems with goods and services, amounted to around £6.6bn in 2008. Of this, around £481 million specifically related to problems with 'defective goods' and 'goods that were faulty, damaged or lacked durability', and the overall detriment caused by goods will be much higher given their additional involvement in other recorded sources of detriment, such as 'repair problems'. This equates to a minimum of 5.38 million problems with goods in the UK, suggesting that the scale of the problem to be addressed here is considerable.¹⁴
6. The Retail Red Tape Challenge concluded in July 2011 that there would be significant gains to be made by rationalising and clarifying consumer law. Reform of the law on sale of goods is a part of the Government's response.
7. To illustrate the complexity of the current law, the following flowchart shows the scheme of remedies for the supply of faulty goods.

¹¹ BIS, 'A Better Deal For Consumers: Delivering Real Change Now and Help for the Future' (July, 2009), p.80

¹² Prof. Twigg-Flesner & Prof. Geraint Howells (eds.), 'Consolidation and Simplification of UK Consumer Law' (Nov, 2010)

¹³ Law Commissions, 'Consumer Remedies for Faulty Goods' (2009)

¹⁴ OFT, 'Consumer Detriment Survey', (April 2008) - data broken down by Problem Type Category & then converted to 2011 prices based on inflation



8. On the basis of the expert advice received as part of the above listed reviews, and recognising both business support for this approach and the significant scale of potential consumer gain, the Government is persuaded that intervention is warranted at this time.

Policy objective

9. The policy objective is to reduce business costs by clarifying the law, and thereby also to empower consumers and undermine rogue traders. By making the law clearer and more accessible the new law should make consumers more confident to assert their rights, thereby contributing to dynamic markets, adventurous purchasing, competition and growth.

Policy Proposals

10. The government has identified 5 individual policy proposals, each with a number of options. The list below provides a summary of our preferred options, showing how each fits within three broad themes:
 - Clarity and understanding of the law – this theme covers issues stemming from the complexity of the language of the current legislation and from lack of consumer awareness of the law.
 - Lack of definition – this theme covers areas where the current framework does not provide clear-cut answers (either intentionally or unintentionally) to some common issues.
 - Lack of consistency – this theme includes issues caused by inconsistencies within the law.

Clarity and understanding the law

11. Along with a general approach to drafting the Bill which will aim to use simple, modern language, we have a single proposal that falls within this category:
 - Establishing a statutory scheme of guarantees and clearly stated remedies for breach of these guarantees. This would replace the current “implied terms” model in which quality standards are applied to the underlying contract, necessitating an understanding of contract law to fully appreciate the specifics of the consumer’s rights.

Lack of definition

12. Proposals detailed below that fall within this category are:
 - Establishing a period of 30 days, within which the good may be returned for a full refund if a fault is identified. At present there is an undefined period for inspection and return of a faulty good and this lack of definition has been highlighted by both business and consumer groups as a source of dispute and therefore cost.
 - This would clarify the current situation where a consumer may only access the second tier remedies if a repair/replacement is impossible or disproportionate, or has not been provided within a “reasonable time” and without “significant inconvenience” to the consumer. (If such circumstances arose before the fixed number of repairs/replacement or time limit had been met, then the consumer would still be able to access second-tier remedies at that point.) At present these terms are unclear, leading to many costly disputes.
 - Establish a minimum refund (as a proportion of the amount paid) that a consumer can expect to receive on exiting the contract through the second tier remedy of rescission. At present the retailer is entitled to make a deduction from the refund to account for the use that the consumer has had of the goods prior to the fault manifesting; however, no guidance is available on how this deduction should be calculated.

Lack of consistency

13. There is a single proposal that falls into this category:
 - Align the remedies for all transaction types for the supply of goods. At present, different remedies apply, depending on the type of contract that has been entered into. In many cases it is not clear what type of agreement the contract forms, so it is difficult to establish what remedies are available to the consumer.

Our proposal is that the remedies currently available for sale of goods should be extended to other transaction types.

14. **N.B.** It should be noted that the current framework applies (and the new one will continue to apply) to goods of an enormous range of type and quality. At present, in the Sale of Goods Act 1979, for goods sold in the course of a business, “goods are of satisfactory quality if they meet the standard that a reasonable person would regard as satisfactory, taking account of any description of the goods, the price (if relevant) and all the other relevant circumstances” (s.14(2A)). This requirement will be retained, and therefore in order to access any of the consumer remedies this ‘reasonable person’ test will first have to be met.
15. For this reason, there has been no attempt to distinguish between the quality of different goods when stipulating the remedies to which consumers are entitled. If, for example, the good was so cheap that no reasonable person would expect it to still be working (or in the same condition) after 4 years, then clearly no consumer remedies would be available on the basis of its quality being unsatisfactory at that time. All of the remedies are only available for goods that ought to be functioning properly at the time the problem arises, but are not. The older a good becomes, the less plausible perfect functioning becomes and some parts are expected to wear out faster than others. If even an expensive car develops a faulty battery after 4 years, for example, the consumer would not expect a remedy based on the good being faulty at the time of sale. But if a quality car suffered an engine blow-out after 4 years of normal use, the consumer might have a claim as this would generally not be expected.

Overall Costs and Benefits

Benefits

16. Making consumer rights more accessible and straightforward to understand for both business and consumers should speed up the time taken to resolve disputes, reduce staff training costs and make litigation less likely. A more effective consumer regime would help provide a level playing field for law abiding business by undermining businesses which trade off the opaqueness and complexity of the law to exploit consumers. This will also increase consumer confidence, which should contribute towards increasing competition and innovation, which are key drivers of economic growth.

Costs

17. There will be transition costs for businesses and consumer advisers in understanding the new rules and updating training courses, guidance materials and internal company documents which deal with consumer law. Improved consumer awareness and confidence may result in short term costs to some businesses related to dealing with consumers pursuing their rights, who may previously have “suffered in silence”. There will be some instances where consumers will have to wait longer to exit the contract as a result of our proposal to limit the short term right to reject and there may be some costs as well as benefits to business from the proposals to clarify the law by fixing a minimum value for refunds available at the rescission of contract. There may also be costs for some businesses arising out of proposals to limit the number of mandatory failed repairs to 2 (after which the consumer is entitled to rescind the contract). Some sellers of high-cost items may be able at present to insist on a longer cycle of repairs, if the repairs are relatively minor.

Rationale and evidence that justify the level of analysis used in the IAs

18. The level of analysis possible for the individual proposals varies in accordance with the availability of data and so detailed rationale for the level of analysis is covered in the relevant sections below.
19. High-level figures demonstrating the scale of the problem in general terms are readily available, but in a number of areas more detailed evidence does not exist. For example, we recognise that in a number of the proposals it would be ideal to have evidence of the number of cases where a particular remedy is utilised by consumers but we are informed that retailers do not generally keep records to that level of detail.

20. Additional evidence will be sought during and through the consultation exercise and research will be commissioned to help develop the evidence base further. Our approach to this is set out in the relevant sections.

Risks and assumptions

21. Risks and assumptions associated with the individual proposals are covered in detail in their respective sections, below. A risk that has been identified for two of the proposals is that they may lead to an increase in fraudulent behaviour among some consumers. We believe that in both of the relevant proposals, the benefits in terms of simplicity and reduction in disputes outweighs any increase in fraud that might reasonably be anticipated, but this will be tested in the consultation.

Wider impacts

Competition assessment

22. We believe that a basic floor of consumer rights makes consumers more prepared to buy unfamiliar or unadvertised products from unknown retailers. A base level of remedies provides a risk/reward ratio that allows new providers to enter the market at a competitive price.
23. On the other hand, if the law were to impose excessive consumer rights, this would increase prices. It would prevent consumers from exercising choices about the balance between price and quality which most met their needs. Consumers might be forced to buy a better quality of good than they wished at a higher price.
24. It would appear that competition is best served by a balanced approach, which we believe this proposed change achieves. A limited repair or replacement cycle would give consumers confidence that the goods they buy will live up to what has been promised and meet their legitimate expectations. However, additional rights (such as offering immediate refunds) are best left to the market.

Impact on small firms

25. Small firms are an important part of the retail sector. In 2011 there were around 478,000 businesses with fewer than 50 employees in the 'Wholesale and Retail Trade' (including repair of Motor Vehicles and Motorcycles), and they accounted for 36.5% of total turnover in this sector.¹⁵
26. Ethnic minority businesses are concentrated within this sector¹⁶. Small shops are particularly likely to be Asian-owned. Some studies suggest that as many as three-quarters of all independently-owned single retail outlets in London are Asian¹⁷.
27. Small firms are especially sensitive to some of the problems outlined above. First, they may find it difficult to cope with the present ambiguities in the law, lacking the in-house legal resources of large retailers. Studies show, for example, that they are often over-represented as defendants in small claims proceedings, and find the litigation process particularly stressful¹⁸.
28. Secondly, small firms are most affected by low consumer confidence. Without the right to reject, consumers tend to buy from large firms with well-known reputations. Clarification of the law should therefore disproportionately benefit smaller firms.
29. On the other hand, small firms might be disproportionately affected by an extension of consumer rights. This is because they would find it more difficult to pass the costs of faulty goods to the manufacturer.

¹⁵ BIS & ONS, 'Business Population Estimates for the UK and Regions 2011' (Oct, 2011) – Table 4: UK Industry Summary

¹⁶ Of ethnic minority-led businesses with employees in the UK, 87% are in the service sector, compared with only 72% of non ethnic minority-led businesses. See www.berr.gov.uk/files/file38247.pdf.

¹⁷ For further discussion, see "The contribution of Asian-owned businesses to London's economy" GLA Economics (June 2005) p 13, at http://www.london.gov.uk/mayor/economic_unit/docs/asian_businesses.pdf. Although this looks specifically at the importance of Asian-owned businesses within London, it also summarises research on the issue within the UK.

¹⁸ J Baldwin, *Small Claims in the County Courts in England and Wales* (1997) pp 26 and 100

30. We have considered whether or not small businesses should be exempt from the new legislation but believe that this would mean that, not only would the current complexities continue to cause confusion among the retailers themselves, but that consumers may gravitate towards larger retailers where their rights are clearer and better understood. This would be to the obvious detriment of small retailers.

Implementation Plan

31. The government's intention is to implement these proposals through the planned Consumer Bill of Rights with a tentative implementation date of mid 2014 (subject to the findings of consultations and the Parliamentary timetable). A post implementation review will be carried out within 3-5 years of Royal Assent, as per the requirements for post legislative scrutiny.

The Consumer Law Reform Programme

1. In response to the Retail Red Tape Challenge the Secretary of State for Business announced a consumer law reform programme¹⁹ to clarify and simplify consumer rights. The consumer law reform programme aims to streamline and modernise rights found currently in 12 pieces of legislation and the investigatory powers of Trading Standards officers found scattered in around 60 pieces of legislation.
2. Consumer protection regulations have developed piecemeal over many decades, with confusing overlay of European legislation onto domestic legislation in recent years. Businesses complain that the complexity of the law imposes costs and uncertainty on them and consumer groups complain that consumers cannot understand their rights and so cannot enforce them. Even academics and lawyers complain that the law is too complex. The consumer law reform programme will overhaul this regime setting out a simpler framework in plain English that provides certainty where there is lack of clarity, removes overlaps and unnecessary rules, and updates the law where it is required.
3. The proposals for reform of consumer law will take forward the recommendations and conclusions of numerous academic research reports and public consultations over the last few years. The Davidson report in 2006 concluded that UK law on Sale of Goods was unnecessarily complex and this was reviewed by the Law Commission who made recommendations in 2009²⁰. In 2005 the Law Commission recommended simplification of Unfair Contract Terms law²¹. The University of East Anglia concluded in 2008 that the UK consumer protection regime had three key weaknesses – uneven enforcement, weak redress for consumers when things go wrong and excessively complex law²². A review of this regime in 2008 led by the Better Regulation Executive concluded that much consumer legislation could be simplified and modernised so that consumers and those dealing with consumers are clearer about the framework surrounding their transactions²³. This review revealed strong support across the board for consolidating the legislation, making it much clearer and more accessible. Two further pieces of academic research have more recently made recommendations relating to consumer law for digital content and how the law could be simplified for goods and services²⁴.
4. At the heart of the package of reform BIS will be bidding for a parliamentary slot for a Consumer Bill of Rights. The core of the Bill will overhaul core consumer rights in relation to faulty goods and poor services, and update the law to clarify rights for consumers when purchasing digital content. The Bill will also provide a generic set of Trading Standards investigatory powers in one place²⁵, measures to empower consumers to challenge anti-competitive practices²⁶, and possibly introduce civil court sanctions for breaches of consumer law and provide more effective powers for Local Authorities to regulate street trading.
5. The Bill will be accompanied by a package of secondary legislation that is intended to come into force at the same time using similar language. This will include implementation of the Consumer Rights Directive, updating and clarifying unfair contract terms legislation, and providing a clearer route for consumers to redress after misleading or aggressive practices.

¹⁹ www.bis.gov.uk/news/topstories/2011/Jul/retail-red-tape

²⁰ Davidson Report 2006 www.bis.gov.uk/files/file44583.pdf;
http://lawcommission.justice.gov.uk/docs/lc317_Consumer_Remedies_In_Faulty_Goods.pdf

²¹ http://lawcommission.justice.gov.uk/docs/lc292_Unfair_Terms_In_Contracts.pdf

²² Benchmarking the performance of the UK framework supporting consumer empowerment. www.bis.gov.uk/files/file50027.pdf

²³ www.bis.gov.uk/files/file52071.pdf

²⁴ www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1125-consumer-rights-in-digital-products;
www.bis.gov.uk/assets/biscore/consumer-issues/docs/c/10-1225-consolidation-simplification-uk-consumer-law

²⁵ The RPC has recently reviewed Impact Assessments and a consultation is ongoing (May 2012).

²⁶ The RPC has recently reviewed an Impact Assessment and a consultation is ongoing (May 2012).

6. We believe that the proposed Consumer Law Reform programme will reduce business compliance costs, for example by business spending less time on staff training in consumer law and reduced time and legal expense spent settling disputes with consumers. Retailers tell us they spend time dealing with consumers who are misinformed about their rights, often thinking that they have more rights than is the case, and that they tend to err on the side of caution when settling disputes where the law is unclear.
7. We also believe that the new framework of consumer law will empower consumers to assert their rights. Empowered consumers should stimulate competition and innovation since well protected, well informed consumers are likely to be more open to new market entrants and innovative products. The proposed reforms will therefore contribute to growth as companies seek commercial success through innovation and targeting consumer needs, rather than by misleading them and/or fobbing them off with poor quality goods and services. A clear consumer protection framework helps create a level playing field; those businesses which fail to comply with the law can be tackled through enforcement (private and public), ensuring that honest businesses are competing on a level footing against each other and not against rogues.
8. Whilst we have a fairly robust body of evidence about failings in the existing law and about consumer experiences, behaviour and understanding of consumer law, we need to gather more evidence about business behaviour in order to make a more informed assessment of the impact of the consumer law reform programme as a whole. Government believes that the case for change is very strong, but that the impact of specific change options needs more work.
9. Alongside the formal consultation process, we are therefore planning to gather additional input from different sized retailers and service providers in several sectors in order to estimate better the current baseline and from there make meaningful estimates of likely impact of our proposals. From early discussions with business groups it will probably not be possible to collect all the evidence we would like in enough granularity, for example retailers tell us that they do not always record under which law or whether as a goodwill gesture they offer consumers a refund so they would find it difficult to relate their data back to the Sale of Goods Act. However we are planning a pragmatic approach consisting of sampling, surveys and focus groups to gather, in particular, evidence of costs of implementing any change in consumer law (such as training and communication costs), current practice in resolving disputes, and estimates of the cost of legal advice.
10. We will also explore consumer understanding of the terminology used in consumer law and in the proposed new framework, so that we can adopt a plain English approach where possible.
11. The impact of the changes in the law will rely on consumers and those who deal with consumers knowing about and understanding the new framework of consumer law, and also on its effective enforcement. The Consumer Landscape Review is being implemented and one of its objectives is to streamline the provision of advice on consumer issues through Citizens Advice and the enforcement of consumer law through Trading Standards. Therefore we are already talking to Citizens Advice about their role in communicating the changes that the consumer law reform programme will bring about. We are also engaging with Trading Standards and other enforcers to ensure that they are aware of the proposed changes and actively engaging in the policy development process. We will discuss awareness raising for businesses with a range of business representative bodies.

© Crown copyright 2012

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This publication is also available on our website at www.bis.gov.uk

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

URN 12/955